and Scott were therefore "excludable" at the time of their entry within the meaning of § 241 (a)(1).

Section 211 of the Act of 1952, 66 Stat. 181–182, is entitled "Documentary Requirements." Section 212 of the same Act, 66 Stat. 182–188, is entitled "General Classes of Aliens Ineligible to Receive Visas and Excluded from Admission." INS could clearly have proceeded against either Scott or Errico under § 212 (a)(19), on the basis of their procuring a visa or other documentation by fraud or misrepresentation. Just as clearly Scott and Errico could have then asserted their claim to the benefit of § 241 (f), waiving deportation based upon fraud for aliens who had given birth to children after their entry and who were otherwise admissible. Instead the INS relied on the provisions of § 211 (a), which deal with the general subject of the necessary documentation for admission of immigrants, rather than with the general subject of excludable aliens. Rather than questioning whether a failure to comply with § 211 (a)(3) or (4) by itself rendered an alien "excludable" as that term is used in § 241 (a)(1), the Court in *Errico* implicitly treated it as doing so and went on to hold that § 241 (f) "saves from deportation an alien who misrepresents his status for the purpose of evading quota restrictions, if he has the necessary familial relationship to a United States citizen or lawful permanent resident." *INS* v. *Errico*, 385 U. S. 214, 215.

Errico was decided by a divided Court over a strong dissenting opinion. Even the most expansive view of its holding could not avail these petitioners, since § 241(f) which it construed applies by its terms only to "the deportation of aliens within the United States on the ground that they were excludable at the time of entry." Here, as we have noted, INS seeks to deport petitioners not under the provisions of § 241 (a)(1), relating to aliens excludable at the time of entry, but instead under

the provisions of § 241 (a)(2), relating to aliens who do not present themselves for inspection. Yet there is no doubt that the broad language used in some portions of the Court's opinion in *Errico* has led one Court of Appeals to apply the provisions of § 241 (f) to a case indistinguishable from petitioners', *Lee Fook Chuey* v. *INS*, *supra*, and to decisions of other Courts of Appeals in related areas which may be summarized in the language of Lady MacBeth, "Confusion now hath made his masterpiece."

Aliens entering the United States under temporary visitor permits, who acquire one of the specified familial relationships described in § 241 (f) after entry, have argued with varying results that their fraudulent intent upon entry to remain in this country permanently cloaks them with immunity from deportation even though they overstayed their visitors' permit.[4] Acceptance of this theory leads to the conclusion that § 241 (f) waives a substantive ground for deportation based on overstay if the alien can affirmatively prove his fraudulent intent at the time of entry, but grants no relief to aliens with exactly the same familial relationship who are unable to satisfactorily establish their dishonesty. See *Cabuco-Flores* v. *INS*, 477 F. 2d 108 (CA9 1973), cert. denied, 414 U. S. 841; cf. *Jolley* v. *INS*, 441 F. 2d 1245 (CA5 1971). Balking at such an irrational result, one court has gone so far as to declare that § 241 (f) waives deportability under § 241 (a)(1) even though no fraud is in-

[4] For an example of the differing results within one circuit, see *Muslemi* v. *INS*, 408 F. 2d 1196 (CA9 1969); *Vitales* v. *INS*, 443 F. 2d 343 (CA9 1972), vacated as moot, 405 U. S. 983 (1973); *Cabuco-Flores* v. *INS*, 477 F. 2d 108 (CA9), cert. denied, 414 U. S. 841 (1973). Other circuits have generally held § 241 (f) not available on similar facts. *De Vargas* v. *INS*, 409 F. 2d 335 (CA5 1968); *Ferrante* v. *INS*, 399 F. 2d 98 (CA6 1968); *Milande* v. *INS*, 484 F. 2d 774 (CA7 1973); *Prucz* v. *INS*, 484 F. 2d 396 (CA10 1973).

volved if the alien is able merely to establish the requisite familial tie. *In re Yuen Lan Hom*, 289 F. Supp. 204 (SDNY 1968).

Nor has there been agreement among those courts which have construed § 241 (f) to waive substantive grounds for deportation under § 212 other than the fraud delineated in § 212 (a)(19) as to which other grounds are waived. While some courts have found that § 241 (f) waives any deportation charge to which fraud is "germane" [5] others have found it waives 'quantitative" but not "qualitative" grounds where its requirements are met.[6] Still others have required that "but for" the misrepresentation, the alien meet the substantive requirements of the Act [7] while at least one court has discerned in *Errico* a test requiring that the aliens' fraudulent statement be taken as true, with determination on such hypothetical facts whether the alien would be deportable. *Cabuco-Flores* v. *INS*, *supra*, at 110.

We do not believe that § 241 (f) as interpreted by *Errico* requires such results. We adhere to the holding of that case, which we take to be that where the INS chooses not to seek deportation under the obviously available provisions of § 212 (a)(19) relating to the fraudulent procurement of visas, documentation, or entry, but instead asserts a failure to comply with those separate re-

[5] See *Muslemi* v. *INS*, *supra*, at 1199.

[6] See, *e. g.*, *Godoy* v. *Rosenberg*, 415 F. 2d 1266 (CA9 1969); *Jolley* v. *INS*, 441 F. 2d 1245 (CA5 1971). It is of course difficult to determine which grounds for exclusion fit which characterization. Arguably for example the failure to obtain the required certification by the Secretary of Labor dealt with in *Godoy* v. *Rosenberg*, *supra*, could as easily have been characterized as "qualitative." The Ninth Circuit in *Lee Fook Chuey*, 439 F. 2d 244, 246 (CA9 1971), found evasion of inspection a "quantitative" ground while the Third Circuit in *Bufalino* v. *INS*, *supra*, at 731, found it a "qualitative" grounds not subject to § 241 (f) waiver.

[7] See, *e. g.*, *Loos* v. *INS*, 407 F. 2d 651 (CA7 1969).

quirements of § 211 (a), dealing with compliance with quota requirements, as a ground for deportation under § 241 (a)(1), § 241 (f) waives the fraud on the part of the alien in showing compliance with the provisions of § 211 (a). In view of the language of § 241 (f) and the cognate provisions of § 212 (a)(19), we do not believe *Errico*'s holding may properly be read to extend the waiver provisions of § 241 (f) to any of the grounds of excludability specified in § 212 (a) other than subsection 19. This conclusion, by extending the waiver provision of § 241 (f) not only to deportation based on excludability under § 212 (a)(19), but to a claim of deportability based on fraudulent misrepresentation in order to satisfy the requirements of § 211 (a), gives due weight to the concern expressed in *Errico* that the provisions of § 241 (f) were intended to apply to some misrepresentations that were material to the admissions procedure. It likewise gives weight to our belief that Congress, in enacting § 241 (f), was intent upon granting relief to limited classes of aliens whose fraud was of such a nature that it was more than counterbalanced by after-acquired family ties;[8] it did not intend to arm the dishonest alien

[8] The legislative history of this provision, designed primarily to prevent the deportation of refugees from totalitarian nations for harmless misrepresentations made solely to escape persecution, is fully consistent with our interpetation of the provision. See H. Conf. Rep. No. 2096, 82d Cong., 2d Sess., p. 128; H. Doc. No. 329, 84th Cong., 2d Sess., p. 5; H. Doc. No. 85, 85th Cong., 1st Sess., p. 5; H. R. Rep. No. 1199, 85th Cong., 1st Sess., p. 10; 103 Cong. Rec. 15487–15499, 16298–16310; H. R. Rep. No. 1086, 87th Cong., 1st Sess., pp. 37–38. The predecessor of current § 241 (f), § 7, of the Immigration Act of 1957, Pub. L. 85-316, 71 Stat. 640, was consistently described during debate by its supporters as making minor adjustments in the immigration and naturalization system. Congressman Celler, a sponsor of the bill enacting § 7, summarized it during House debate in these words:

"[After summary of non-related provision of § 7] This section also

seeking admission to our country with a sword by which he could avoid the numerous substantive grounds for exclusion unrelated to fraud, which are set forth in § 212 (a) of the Immigration and Naturalization Act.

The judgment of the Court of Appeals is

Affirmed.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.

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provides for leniency in the consideration of visa applications made by close relatives of United States citizens and aliens lawfully admitted for permanent residence who in the past may have procured documentation for entry by misrepresentation." 103 Cong. Rec. 16301.

SUPREME COURT OF THE UNITED STATES

No. 73-1541

Robert Reid and Nadia Alice Reid, Petitioners, *v.* Immigration and Naturalization Service.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March 18, 1975]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, dissenting.

In *Immigration and Naturalization Service* v. *Errico*, 385 U. S. 214 (1966), respondent evaded quota restrictions by falsely claiming to be a skilled mechanic. Once in this country, he became the parent of a United States citizen. We found Errico's deportation barred by § 241 (f) of the Immigration and Nationality Act. In the instant case, petitioners evaded quota restrictions by falsely claiming United States citizenship. After settling here, they too became parents of United States citizens. Yet the Court today finds that § 241 (f) is no bar to their deportation. Because I find no material difference between the instant case and *Errico*, I dissent.

Section 241 (f) of the Immigration and Nationality Act provides:

> "The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a

child of a United States citizen or of an alien lawfully admitted for permanent residence."

In *Errico*, *supra*, after a full review of the statute and its legislative history, the Court concluded that § 241 (f) was intended "not to require that aliens who are close relatives of United States citizens have complied with quota restrictions to escape deportation for their fraud . . . ." *Id.*, at 223. This conclusion was necessary "to give meaning to the statute in light of its humanitarian purpose of preventing the breaking up of families composed in part at least of American citizens. . . ." *Id.*, at 225.

Thus *Errico* governs the instant case. The Court, however, distinguishes *Errico* on the ground that there deportation proceedings were based on § 211 (a)(4) of the Act, which deals with quota requirements, whereas here deportation is based on § 241 (a)(2), which deals with inspection requirements. This distinction is grounded on the argument that § 241 (f) tracks § 212 (a)(19), which deals with excludable aliens, and Errico was such an alien. But petitioners in the instant case were also excludable under § 212 (a)(19), since they sought "to enter the United States, by fraud." Indeed the Court's entire approach was explicitly rejected in *Errico* itself:

> "At the outset it should be noted that even the Government agrees that § 241 (f) cannot be applied with strict literalness. Literally, § 241 (f) applies only when the alien is charged with entering in violation of § 212 (a)(19) of the statute, which excludes from entry '[a]ny alien who . . . has procured a visa or other documentation . . . by fraud, or by willfully misrepresenting a material fact.' Under this interpretation, an alien who entered by fraud could be deported for having entered with a defective visa or for other documentary irregularities even

> if he would have been admissible if he had not committed the fraud. The Government concedes that such an interpretation would be inconsistent with the manifest purpose of the section, and the administrative authorities have consistently held that § *241 (f) waives any deportation charge that results directly from the misrepresentation regardless of the section of the statute under which the charge was brought*, provided that the alien was 'otherwise admissible at the time of entry.' " *Errico, supra*, at 217 (emphasis added; footnote omitted).

Even if statutory language is unclear any doubt should be resolved in favor of the alien since "deportation is a drastic measure and at times the equivalent of banishment or exile." *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10 (1948). See also *Barber* v. *Gonzales*, 347 U. S. 637, 642–643 (1954); *Immigration and Naturalization Service* v. *Errico*, *supra*, at 225. Today the Court strains to construe statutory language *against* the alien.

The Government contends that if petitioners were to succeed in this case, "the sky would fall in on the Immigration and Naturalization Service."[1] Apart from the lack of credible support for this dire prediction,[2] if the

[1] Tr. of Oral Arg., at 44.

[2] The Government contends that:

"An alien who enters as an immigrant submits himself to the investigations required for the issuance of an immigration visa, and to the supplementary inspection at the port of entry. Records of these investigations are available when a claim of eligibility for waiver under Section 241 (f) is subsequently made. They provide the Immigration Service with a substantial basis for determining later, when the waiver is sought, whether the alien was 'otherwise admissible at the time of entry' and thus entitled to the waiver.

"In contrast, there is no contemporaneous investigation of an alien who enters on a false claim of citizenship; there is unlikely even to be any record of such entry. It would therefore be extremely difficult, if not impossible, to determine whether such an alien was 'other-

Immigration and Nationality Act is indeed unworkable, the remedy is for Congress to amend it, not for this Court to distort its language and the cases construing it.

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wise admissible at the time of entry.'" Brief for the United States, at 10–11.

This argument, however, overrates the effectiveness of the immigrant visa system. The Fifth and the Ninth Circuits, in decisions conflicting with the opinion below, have found that the visa system provides no basis for the distinction the Government urges:

"Almost invariably, by the time that the relief provision of 241 (f) is invoked, the integrity of the immigrant visa system has been long violated. Section 241 (f) deals with the problem after the breach has occurred. . . . For example, when the alien misrepresents his identity during the visa process, the information elicited from him is often valueless. When the fraud is discovered, the information derived from the visa process which was tainted by the misrepresentation, may be useless or have little or no bearing upon the ultimate disposition of the case." *Lee Fook Chuey* v. *Immigration and Naturalization Service*, 439 F. 2d 244, 250, 251 (CA9 1970).

"Lies concerning identity, occupation, and country of origin may well render the initial immigration investigation either as worthless as no investigation at all, or as difficult and fruitless as a later § 241 (f) inquiry." *Gonzales de Moreno* v. *Immigration and Naturalization Service*, 492 F. 2d 532, 537 (CA5 1974).

As the Ninth Circuit held, the very essence of *Errico* was that "[w]hen § 241 (f) is invoked, the immigration processing system has already proved ineffective. Congress made the wholly reasonable choice that the interest in family unity outweighs the deterrent effects of a more draconian policy." *Lee Fook Chuey, supra*, at 251.